IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal From Order No.705 of 2005

Jonson Alfred D'Souza .... Appellant
vs
Mun Corpn of Gr Mumbai & Ors..Respondents

Mr.V.A Thorat with Mr. S.A.Sawant for appellant
Ms Geeta Mulekar for respondent no.l
Mr.P.K Dhakephalkar with Mr. Sharma for respondent nos.2 and 3.

CORAM: B.H.MARLAPALLE J
Dated 23.8.2005

P.C:

. Heard Mr. Thorat, learned senior counsel with Mr. Sawant for the plaintiff, who has filed L.C.Suit No.2335 of 2005 and by the impugned order dated l3.6.2005 the prayer for ad-interim injunction came to be rejected by the learned judge of the City Civil Court, Bombay in Notice of Motion No.2l94 of 2005 moved in the same suit. The suit shed admeasures l4 ft x l2.l0 ft located in the premises of defendant no.3 housing society and the plaintiff claims that he has been in possession of the same premises for more than 40 years. As per the plaintiff his father was originally running a garage, which he has taken over and he sought

injunction for reconstruction of the said shed.

2. The suit has been filed for a declaration and permanent injunction in respect of the suit premises. When the Notice of Motion was taken up in its draft stage, the learned judge of the City Civil Court noted that two suits are pending in the same court in respect of the same suit premises since l988 and suit shed was not in existence. In such circumstances mandatory injunction for reconstruction of the structure demolished purportedly in 2002 could not be granted by way of ad-interim order and, therefore, the relief was declined.

3. As per the plaintiff when the draft notice of motion was heard on l3.6.2005 the suit structure was demolished but was not fully demolished and the officers of the respondent no.l Corporation high -handedly entered the suit premises on l5.6.2005 and photographs of demolished entire structure have been placed on record to show that in place of suit structure, defendant society has put up another gate. The plaintiff thus contends that he has been

evicted from the premises without following the due process of law, more so because of the alleged high handed action of the officers of the Corporation in connivance with the defendant nos.2 and 3.

4. The Notice of Motion No.2l94 of 2005 is pending and, therefore, relief as prayed for in the notice of motion will have to be considered by the trial court after pleadings in the notice of motion are filed. The trial court did not fall in error in holding that mandatory injunction for reconstruction of the structure could not be granted by ad-interim order. In this appeal Mr.Thorat, learned counsel, however, contended that the demolition of the structure was after the ad-interim order was passed on l3.6.2005 and, therefore, it would be necessary to protect possession of the plaintiff over the suit shed whereupon the structure was standing.

5. Undoubtedly this is an issue which can certainly be considered in the pending notice of motion and the trial court would be in a better position to appreciate the claim made by the

respective parties for prima considerations. The relief prayed for in the notice of motion cannot be granted in this appeal while the motion is pending before the trial court.

6. The respondents shall file their reply to the notice of motion by the next date before the trial court and the hearing of the motion is expedited. The trial court shall hear and decide the notice of motion peremptorily before the end of November 2005.

Appeal stands disposed of accordingly.

. In view of the disposal of the main appeal, civil application does not survive.